Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Jail Appeal No. 1803 of 2001

Lachhman Singh
S/o Bhim Singh
R/o Village Dungra Patti,
Rausal, Tehsil Champawat,
District Pithoragarh …… Appellant

Versus

State of Uttaranchal …….. Respondent

Mr. S.P.S. Panwar, Amicus Curiae for the appellant.
Mr. T.A. Khan, Brief Holder for the respondent State.

Coram : Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 22.06.2000, passed by learned Sessions Judge, Pithoragarh, in Sessions trial No. 40 of 1996, whereby accused / appellant Lachhman Singh is convicted under Section 302 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and sentenced to undergo imprisonment for life. However, he is acquitted of the charge of offence punishable under Section 304B of I.P.C., by said court.

2) Heard Mr. S.P.S. Panwar, Amicus Curiae appearing on behalf of the appellant & Mr. T.A. Khan, Brief Holder for the state, and perused the entire evidence on record.

3) Prosecution story, in brief, is that Smt. Kamla Devi (deceased) was daughter of complainant Smt. Devki Devi (P.W. 2). She (Kamla Devi) was married to accused / appellant Lachhman Singh some 7 – 8 years before her death on 20.05.1996. In the family of the deceased they were only two in the house i.e. deceased and her husband. A report (Ext. A –3) was lodged by accused / appellant on 21.05.1996 to Naib Tehsildar, Champawat, that his wife has committed suicide at 4:00 P.M., on 20.05.1996, by hanging herself inside the house. (In Uttarakhand hills, in certain areas, Revenue Officers are given police powers). The Naib Tehsildar proceeded on 22.05.1996, to the place of occurrence and found the body of deceased hanging by neck in her house, with one end of the rope tied on a wooden log, used as beam. He took the dead body in his possession and prepared the inquest report (Ext. A –4), sketch of the dead body (Ext. A-5); police form No. 13 (Ext. A-6); site plan (Ext. A –7) and letter to the Chief Medical Officer, requesting him for postmortem examination of the dead body. The dead body was sent in sealed condition for postmortem examination. On 22.05.1996, at about 4:00 P.M., Dr. U.S. Adhikari (P.W. 1) conducted autopsy on the dead

body of Kamla Devi along with Dr. T.K. Tamta, and prepared postmortem examination report (Ext. A –1). In the autopsy it was found that there was no external injury on the person of the deceased except one contusion on her head. It was found in the postmortem examination that there was depressed fracture on the right side of frontal bone inside the head, and as a result of which, membranes were congested. No ligature mark was found on the neck by the doctors conducting the postmortem examination. On 04.06.1996, P.W. 2 Devki Devi (mother of the deceased) lodged an oral report with the Naib Tehsildar making allegation against her son-in-law (appellant) that he committed murder of his wife Kamla Devi. She further alleged that appellant used to give beating to his wife, and after commission of murder, he lodged false report that his wife died by committing suicide by hanging. On the basis of said oral report, a check first information report (Ext. A –2) was prepared, by the Naib Tehsildar. After the crime is registered, the investigation was entrusted to the Patwari of Patwari circle Rausal. He interrogated the witnesses, and on completion of investigation, submitted charge sheet (Ext. A –8) against accused / appellant Lachhman Singh, for his trial in respect of the offences allegedly committed by him punishable under Section 304B / 306 of I.P.C.

4) The Chief Judicial Magistrate, Pithoragarh, on receipt of the charge sheet, after giving necessary

copies to the accused, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions, for trial. Learned Sessions Judge, Pithoragarh, after hearing the prosecution and the defence, on 13.12.1996, framed charge of offence punishable under Section 302 of the I.P.C. and the one punishable under Section 304B of I.P.C., against the accused Lachhman Singh, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Dr. U.S. Adhikari (who conducted the autopsy on the dead body with his another colleague Dr. T.K. Tamta); P.W. 2 Devki Devi (complainant and mother of the deceased); P.W. 3 Laxman Singh S/o Moti Singh (cousin of the deceased); P.W. 4 Aan Singh (a relation of the accused) and P.W.5 Prem Ballabh Joshi (the Investigating Officer). The oral and documentary evidence was put to the accused, under Section 313 of Cr.P.C., in reply to which he admitted that Kamla Devi is his wife and he lodged report dated 21.05.1996 that his wife has committed suicide, but rest of the evidence was alleged by him to be false. No evidence was adduced in defence on behalf of the accused. The trial court, after hearing the parties, found accused Lachhman Singh, guilty of charge of offence punishable under Section 302 of I.P.C. However, it found that no offence punishable under Section 304B of I.P.C. was made out as there was no evidence of demand of dowry on the part of the accused. The trial court, after hearing the parties on sentence, sentenced the convict Lachhman

Singh to rigorous imprisonment for life. Aggrieved by said judgment and order dated 22.06.2000, this appeal has been preferred by the convict, from jail.

5) It is a case of circumstantial evidence. Following are the circumstances brought on record by the prosecution against the accused / appellant:

1. Deceased was wife of the accused / appellant.
2. She died homicidal death on 20.05.1996.
3. In the family of deceased there was none except her husband and herself.
4. The postmortem examination shows that the deceased had died as a result of shock due to internal hemorrhage and head injury. But, accused / appellant lodged report (Ext. A –3) that his wife committed suicide by hanging herself in the house.
5. There was no ligature mark found around the neck, at the time of postmortem examination, which shows the report lodged by the accused / appellant about the cause of death of his wife, was false.
6. From the medico-legal evidence, it is clear that after sustaining head injury, Kamla Devi (wife of accused / appellant) could not have committed suicide by hanging herself.

7. P.W. 2 Devki Devi (mother of the deceased) and P.W. 3 Laxman Singh S/o Moti Singh (cousin of the deceased) have stated that the relationship between the accused and his wife were not cordial.
8. Deceased had no enmity with any other person.

6) P.W. 2 Devki Devi, mother of the deceased, has stated on oath that her daughter Kamla Devi (deceased) was married to Lachhman Singh (accused / appellant) S/o Bhim Singh. She has further stated on oath that accused / appellant used to give beating to his wife. She has also stated that several times her daughter complained her about the cruelty committed by her husband.

7) P.W. 3 Laxman Singh, S/o Moti Singh (a cousin of the deceased) has corroborated the statement made by P.W. 2 Devki Devi that deceased was married to Lachhman Singh (accused / appellant). He has further stated that whenever Kamla Devi used to come to her parent's house, she told that her husband beats her.

8) P.W. 4 Aan Singh is relation of the accused / appellant, who has simply corroborated the fact that Kamla Devi was wife of accused / appellant Lachhman Singh.

9) Apart from what has been proved by the aforesaid three witnesses, accused / appellant Lachhman Singh in

his statement under Section 313 of Cr.P.C. has admitted that he got married to Kamla Devi (deceased) in the year 1989. He has further admitted that in their house he and his wife were the only members in the family. In his replies to the questions put under Section 313 of Cr.P.C., when accused Lachhman Singh was asked about the report (Ext. A –3) being lodged by him that his wife has committed suicide by hanging, he admitted having lodged said report.

10) Statement of P.W. 1 Dr. U.S. Adhikari, a Medical Officer, who conducted autopsy on the dead body of Kamla devi along with another Medical Officer Dr. T.K. Tamta, and prepared postmortem examination report (Ext. A –1), shows that Kamla Devi did not die due to asphyxia as a result of hanging. The Medical Officer has clearly stated that there was no ligature mark found on the person of the deceased. Rather, on internal examination, it was found that there was fracture on right side of the frontal bone of the skull. P.W. 1 Dr. U.S. Adhikari stated on oath that after postmortem examination he gave the opinion that deceased had died on account of shock due to internal hemorrhage and head injury. This statement establishes on record that the accused / appellant Lachhman Singh has brought forward a false story that his wife committed suicide by hanging herself.

11) From the above discussion of evidence on record, we are of the view that chain of circumstances suggests one and only one conclusion that it is only the accused / appellant and none else who was committed murder of his wife. As such, we are in agreement with the findings of the trial court that prosecution has been successful in proving the charge of offence punishable under Section 302 of I.P.C, against the accused / appellant. We are also in agreement with the learned Sessions Judge, that the charge of offence punishable under Section 304B of I.P.C., is not made out, as there is no allegation of demand of dowry or cruelty, on its account. The sentence of imprisonment for life awarded by the trial court is just, proper and legal, in the above circumstances of the case. Therefore, the appeal is liable to be dismissed.

12) The appeal is dismissed. The Registry of this Court is directed to send the information to the Superintendent of the jail, concerned.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt. March 20, 2007.
H. Negi